IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1423 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO.LTD. - Applicant(s)

Versus

PRATIBHABEN MANHARLAL SHAH & 4 - Opponent(s)

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Appearance :

MR RR MARSHALL for Petitioner No(s).: 1.

MR AR MAJMUDAR for Respondent No(s).: 1.

None for Respondent No(s).: 2, 3, 4,5.

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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 02/08/2005

ORAL JUDGMENT

1.Instant petition under Section 115 of the Code of Civil Procedure ('the Code' for short) is filed against the order dated 28.7.1994 rendered below application exh.5

in MACP No. 1362 of 1991 by the MACT (Aux.), Vadodara by which the application filed by Opponent Nos. 1 to 4 ('the claimants' for short) seeking condonation of delay of 14 months and 23 days caused in filing the MACP has been condoned and the MACP was ordered to be registered and numbered.

2. The claimants had filed MACP No. 1362 of 1991 before the MACT(Aux.), Vadodara to receive the compensation on account of untimely demise of the husband of opponent No.1-Manharlal Bhikhabhai in a road accident which has taken place on 3.2.1990. Since the application was filed after expiry of 12 months from the date of the accident, claimants had also filed application exh.5 seeking condonation of delay caused in filing the MACP.

3. Present petitioner contested the application by filing written objection inter alia contending that after expiry of 12 months application seeking condonation of delay cannot be entertained and therefore it was prayed to dismiss the application.

4. The MACT (Aux.), Vadodara, after considering the submissions advanced at the bar and considering the statutory provisions contained under the Motor Vehicle Act ('the MV Act' for short), granted the application and thereby delay caused in filing the application had been condoned and MACP has been ordered to be registered and numbered, which has given rise to the present petition at the instance of the Insurance Company – United India Insurance Co. Ltd.

5. This Court has considered the submissions advanced by Mr.R.R.Marshall, learned advocate of the petitioner and Mr.A.R.Majmudar, learned advocate for the claimants, perused the impugned order, statutory provisions

contained under the Act as well as reported decision of the Supreme Court in the case of Dhannalal vs. Vijayvargiya and others, reported in AIR 1996 SC 2155 = 1996 (2) GLH 459.

6. As per the averments made in the claim petition there is no dispute that the alleged accident has taken place on 3.2.1990. Therefore, the amended Motor Vehicles Act, 1988 which has come in force with effect from 1.7.1989 would be applicable for deciding the claim petition filed by the petitioner. As per Section 166(3) of the MV Act 1988 which has come in force with effect from 1.7.1989, the period of limitation for filing claim petition was six months from the date of the accident. However, in view of the proviso, the Tribunal may entertain the claim petition after expiry of six months but not later than twelve months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. Therefore, in view of the embargo contained under proviso to sub-Section (3) of Section 166 of the MV Act, which has come in force with effect from 1.7.1989, obviously the petition filed by the petitioner was time barred.

7. It may be noted that the MV Act of 1988 has been again amended by Act No.54 of 1994 which has come in force from 14.11.1994 and by the amended Act, sub-section (3) of Section 166 of the MV Act has been omitted which prescribed period of limitation for filing the claim petition which was there in the MV Act of 1988 which has come in force with effect from 1.7.1989.

8. Therefore, the question that arises for consideration of this Court is as to whether the amendment made by

Act No.54 of 1994 which has come in force with effect from 14.11.1994 is made retrospective in operation?

9. In this connection, it would be appropriate to refer to the judgment of the Supreme Court in the case of Dhannalal v. Vijayvargiya & others, reported in AIR 1996 SC 2155 = 1996 (2) GLH 459. In paragraphs 6 and 7 of the said reported decision, the Supreme Court has observed as under:

> â¬S*6. Before the scope of sub-section (3) of Section 166 of the Act is examined, it may be pointed out that the aforesaid sub-section (3) of Section 166 of the Act has been omitted by Section 53 of the Motor Vehicles (Amendment) Act, 1994 which came in force w.e.f. 14.11.1994. The effect of the Amending Act is that w.e.f. 14.11.1994 there is no limitation for filing claims before the Tribunal in respect of any accident. It can be said that Parliament realised the grave injustice and injury which was being caused to the heirs and legal representatives of the victims who died in accidents by rejecting their claim petitions only on ground of limitation. It is a matter of common knowledge that majority of the claimants for such compensation are ignorant about the period during which such claims should be preferred. After the death due to the accident, of the bread earner of the family, in many cases such claimants are virtually on the streets. Even in cases where the victims escapes death some of such victims are hospitalised for months if not for years. In the present case itself the applicant claims that he met with the accident on 4.12.1990 and he was being treated as an indoor patient till 27.9.1991. According to us, in its wisdom the Parliament, rightly thought that prescribing a period of limitation*

and restricting the power of Tribunal to entertain any claim petition beyond the period of twelve months from the date of the accident was harsh, inequitable and in many cases was likely to cause injustice to the claimants. The present case is a glaring example where the appellant has been deprived by the order of the High Court from claiming the compensation because of delay of only four days in preferring the claim petition.

7. *In this background, now it has to be examined as to what is the effect of omission of sub-section (3) of Section 166 of the Act. From the Amending Act it does not appear that the said sub-section (3) has been deleted retrospectively. But at the same time, there is nothing in the Amending Act to show that benefit of deletion of sub-section (3) of Section 166 is not to be extended to pending claim petitions where a plea of limitation has been raised. The effect of deletion of sub-section (3) from Section 166 of the Act can be tested by an illustration. Suppose an accident had taken place two years before 14.11.1994 when sub-section (3) was omitted from Section 166. For one reason or the other no claim petition had been filed by the victim or the heirs of the victim till 14.11.1994. Can a claim petition be not filed after 14.11.1994 in respect of such accident? Whether a claim petition filed after 14.11.1994 can be rejected by the Tribunal on the ground of limitation saying that the period of twelve months which had been prescribed when sub-section (3) of Section 166 was in force having expired the right to prefer the claim petition had been extinguished and shall not be revived after deletion of sub-section (3) of Section 166 w.e.f.*

> *14.11.1994? According to us, the answer should be in negative. When sub-section (3) of Section 166 has been omitted, then the Tribunal has to entertain a claim petition without taking note of the date on which such accident had taken place. The claim petitions cannot be thrown out on the ground that such claim petitions were barred by time when sub-section (3) of Section 166 was in force. It need not be impressed that Parliament from time to time has introduced amendments in the old Act as well as in the new Act in order to protect the interest of the victims of the accidents and their heirs if the victims die.â¬ý*

10. In view of the clear elucidation of the Supreme Court in the above referred to judgment to the facts of the present case, it is clear that by Amendment Act No.54 of 1994 which has come in force from 14.11.1994 by which sub-section (3) of Section 166 of the MV Act prescribing the period of limitation for filing claim petition in the MV Act 1988 which has come in force from 1.7.1989 came to be deleted and the said amendment Act No.54 of 1994 which has in force from 14.11.1994 will govern all the pending petitions before the Tribunals. So far as the limitation is concerned, in view of the amendment there is no period of limitation in filing claim petition under the MV Act.

11.In aforesaid view of the matter, the impugned order dated 28.7.1994 passed by the MACT (Aux.) Vadodara granting the application seeking condonation of delay is just and proper and in passing the said order no illegality or infirmity has been committed by the MACT (Aux.), Vadodara, which does not call for interference of this Court in exercise of powers conferred under

Section 115 of the Code.

12.Seen in the above context, the petition lacks merit, deserves to be rejected.

13.For the foregoing reasons, the petition fails and accordingly it is rejected with no order as to costs. Rule is discharged. Interim relief granted at the time of issuance of Rule shall stand vacated.

14.The MACT(Aux.), Vadodara is hereby directed to proceed with the hearing of MACP No. 1362 of 1991 as expeditiously as possible and try to conclude it within a period of 6 months from the date of receipt of the writ of this Court.

(A.M. Kapadia, J.)

Jayanti*